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MESSAGE

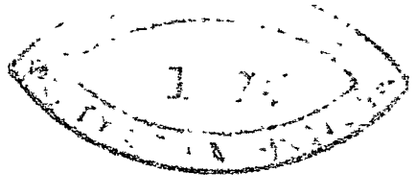
— OF —

ROBERT B. LINDSAY,

GOVERNOR OF ALABAMA,

TO THE

GENERAL ASSEMBLY, NOV. 21, 1871.



MONTGOMERY, ALA.:
W. W SCREWS, STATE PRINTER.
1871.

MESSAGE.

EXECUTIVE DEPARTMENT,
STATE OF ALABAMA,
MONTGOMERY, ALA., Nov. 21st, 1871.

Gentlemen of the Senate, and
House of Representatives:

I respectfully submit, for your information, statements of the operations of the Government, in its several Departments during the past year, together with suggestions as to the legislation I deem necessary and proper to insure its satisfactory and successful administration in the future.

The changes and modifications which the Constitution of the State has undergone in recent years, have been so many, so essential and radical in their character, as to render legislation exceedingly onerous and difficult, to increase its responsibility and to require the exercise of the highest degree of caution and patriotism. It may be justly said that the fortunes and destiny of Alabama have been entrusted to your guidance at a grave and momentous period in her history, and that the measure of her social and national prosperity for long years to come, will, to a great extent, be determined by the fidelity and prudence observed in the execution of the high and important trust.

As a member of the Federal Union, and at the same time a separate and distinct political sovereignty, the relations and obligations of Alabama are in their nature complex and two-fold; yet these relations and obligations are easily

ascertained—as they are well defined and clearly limited in the Constitutions of the Nation and of the State.

To the provisions and limitations contained in those instruments, all legislation should conform with inflexible precision; nor should it ever be forgotten that the most trifling and apparently insignificant disregard of the very least of their requirements is perilous to the liberties and immunities they are designed to preserve and perpetuate; that the severity of the restrictions can never justify their violation; that however much its mandates may differ from our peculiar opinions, or even from our cherished principles of right and justice, obedience to the Organic Law, while it remains such, is alike enjoined by the law itself, and demanded by the highest and most sacred interests of society.

A recognition and observance of these and kindred maxims are of especial and paramount importance at a crisis, when, by the will and power of sectional majorities, and when sectional passions and antagonisms maddened the popular heart and perverted the popular reason, Amendments affecting the very foundations of the Government, and introdrcing new and strange elements into our political being, have been engrafted upon our Constitutions, State and Federal. Yielding obedience to the provisions of such Amendments, is not even by implication an acknowledgment of their wisdom, a vindication of their justice nor an approval of the manner of their adoption. It is simply the discharge of a duty, incumbent on every citizen to maintain the Constitution as it is, to abide by it and support it by its integrity, until it is again altered or amended according to the forms itself prescribes. This is the true theory of constitutional government. Under it hardships and wrongs may be endured for a season, but the healing efficacy of time will always bring the remedy.

Confident that your legislation will be strictly confined

within the boundaries of the organic laws of the land, I also respectfully urge upon you a constant practical observance of that wise and suggestive provision of the Constitution of the State, which declares that "no bill shall have the force of law until on three several days it be read in each House and free discussion be allowed thereon, &c." Experience sanctions the wisdom of this precautionary requirement, and it should never be departed from, unless the emergency is urgent and palpable. In this connection I cannot but revert to the unnecessary and expensive consumption of the time of former sessions in legislating upon subjects already provided for in the general laws of the State; and ask you to sedulously avoid it. The mere fact, that the General Assembly has the constitutional power to grant relief, does not justify its intervention, when that relief is easily accessible through statutes already enacted. The creation of free dealers and the transformation of minors into men is a very costly practice, were even the wisdom of the policy confirmed by experience.

CONDITION OF THE PEOPLE.

When it is remembered how severe and trying has been the ordeal to which the endurance of the people has been subjected—what a succession of reverses it has encountered, and how many hostile influences overcome, the present social condition of the State may be considered encouraging and the prospect cheering. Animated by a growing spirit of industry and economy, the people of Alabama, if their energies are not repressed by unfriendly laws, will soon retrieve their shattered individual fortunes and acheive for the State the full enjoymeut of the prosperity and affluence, which the development of her vast natural wealth will surely bring to her. To promote and also to hasten this great and vital development, an increase of two agencies is eminently needed—

and increase of capital and labor. Their influx from foreign countries, while it has been abundant into other and less inviting States, has hitherto been reluctant and slow into Alabama. This is not at all surprising—it is the the natural consequence resulting from the world's want of confidence in our political stability, and the assertions of lawlessness and barbarism with which our moral and social character has been so persistently and wrongfully assailed—assailed often and wickedly, by those whom nature or duty had constituted its rightful defenders—wantonly assailed by men representing Alabama in the Halls of the national Congress. Prudence on the part of the citizen, united to justice and circumspection in the administration of the Government, will counteract such malignant influences and remedy the damaging evil.

IMMIGRATION.

I recommend to your careful and earnest consideration the question of immigration. The infusion of new industrial energy and intelligence through the introduction of a vigorous, hardy and law abiding population from other climes and countries, could not fail to have a salutary and invigorating effect on all our industries, on our social and material interests. I suggest for your investigation, the propriety and the utility of the establishment of a Bureau of Immigration in connection with the office of the Commissioner of Industrial Resources. Such a Bureau could be organized and conducted at very trifling expense to the State, compared with the advantages and benefits accruing from it.

INTERNAL IMPROVEMENTS.

The Internal Improvements of the State are steadily advancing. Many adverse circumstances, it is true, have combined to retard the progress of railroad construction,

yet I am gratified in being able to state, that, during the past year, an aggregate of about two hundred miles has been built or completed in different sections, and that the Montgomery and Eufaula road has been recently opened, and is now in operation through its entire length; thus bringing into active business and social connection the Capital City with the enterprising and cultivated communities of East Alabama; and that the South & North Road has been completed to Elyton, thus unlocking for the southern portion of the State, the incalculable mineral resources with which our mountain regions abound. When the railroads, now being constructed, are finished, the extent of railroads, within the State, will approximate three thousand miles.

What a glorious and promising prospect is thus afforded to our hopes!

ENDORSEMENT OF RAILROAD BONDS.

The endorsement by the State of the bonds of railroad companies, under laws first enacted at the Legislative session 1866–7, and enlarged and continued by subsequent statutes, has imposed upon the Executive Department unusual responsibility, solicitude and labor.

Finding, on my accession to office, the system of endorsement already on the statute book, and being invested with neither the power of determining its wisdom, nor the prerogative of adjudicating its validity, I have diligently and earnestly endeavored to execute the various laws pertaining to it, according to their letter and spirit. Undeterred by the malevolent attacks of the slanderer and his venal, subsidized or ignorant emissaries and agents on the one hand, and repelling on the other, with equal scorn, the thoughtless, if not dishonest, counsel of repudiation, I have labored with constant and unremitting earnestness, to maintain the honor and protect the credit of Alabama, and guard her against entanglement and loss

through the villainous schemes of men, who plotted their own enrichment upon her ruin.

ALABAMA AND CHATTANOOGA RAILROAD BONDS.

On the 18th day of January last, and immediately on your re-assembling at the expiration of the Christmas recess, I communicated to you, in a written message, all the information, then possessed, with regard to the administration and consequences of the endorsement system; but especially invited your attention to the unexpected failure of the Alabama & Chattanooga Railroad Company to provide for and pay the interest due on both the direct bonds of the State, loaned to said Company, and on their first mortgage bonds endorsed by the State,—and assigned the reasons which impelled me to refuse, on behalf of the State, the payment of said interest, unless required and empowered so to do by additional Legislation.

Your investigation and action upon this grave and important subject terminated in the enactment of the following statute, which I deem proper to be here cited and presented to you in its own words, in order to insure a clearer comprehension of my subsequent official action in the premises.

An Act,

To provide for the payment of the interest due and unpaid upon the valid claims against the State, on account of the failure of the Alabama and Chattanooga Railroad Company to pay said interest.

Section 1. *Be it enacted by the General Assembly of Alabama*, That the Governor be, and he is hereby, authorized and required to inquire into and to ascertain the amount of bonds issued and loaned to the Alabama and Chattanooga Railroad Company, and of the bonds of said Company endorsed by the State; and when such amount is ascertained, the Governor shall make provision by temporary loan, or from money in the State treasury not otherwise appropriated, to pay the interest upon said

bonds, whenever the coupons attached thereto shall be presented to him, or to any agent he may appoint for that purpose; *Provided, however*, That no interest shall be paid upon any of said bonds not proved to have been held on the 1st day of January, eighteen hundred and seventy-one, by innocent and *bona fide* purchasers: *And provided, further*, That no interest shall be paid upon any of said bonds in the hands of said railroad company, any incorporator or agent thereof, or merely hypothecated by them, it being the object and intent of this enactment to pay interest only to innocent and *bona fide* purchasers of valid claims against the State.

SEC. 2. *Be it further enacted*, That whenever the Governor shall have paid any of said interest, he may proceed under any statutes providing a summary remedy in such case, or according to any forms of law which he may deem best and safest for the interest of the State, to recover the amount so paid for the Alabama and Chattanooga Railroad Company.

By this Act the entire responsibility of investigation and payment devolved upon me.

Appreciating the magnitude and importance of the trust thus imposed as well as my individual and official accountability for its successful execution, I proceeded in person to the city of New York, where the bonds were supposed to have been negotiated and the interest payable; and at once instituted the necessary and contemplated investigation, availing myself in its prosecution of every certain and available avenue and source of information. Soutter & Co., Bankers, and at a previous time financial agents of the Alabama and Chattanooga Railroad Company, furnished me with a sworn statement, transcribed from their books, showing that between the 7th day of April, 1869, and the 1st day of October, 1870, they sold and delivered four thousand first mortgage bonds of the Alabama and Chattanooga Railroad Company of one thousand dollars each, endorsed by the Governor of the State of Alabama, and sealed with the seal of the State; that about one thousand of said bonds went into the hands of the American public, and the remainder were sold in Europe.

Their statement further showed, that they had sold and delivered between the 21st day of April, and 19th of May, 1870, two thousand bonds of the State of one thousand dollars each, issued to the Alabama and Chattanooga Railroad Company, numbered from 1 to 2,000, consecutively, and that none of said bonds, either State or endorsed, were sold for less than ninety cents on the dollar. This statement was sworn to before a Commissioner of Alabama, by Robert Soutter.

From August Goettel, of the firm of August Goettel & Co., German Bankers, I received a statement sworn to by him, showing that on different days ranging from April 1st to May 19th, 1870, they had purchased from Soutter & Co., the State bonds loaned to said Railroad Company, amounting in the aggregate to two thousand bonds, ($2,000,000,) by order and on account of Emile Erlanger & Co., of Paris, and paid for the same at the rate of ninety-five cents on the dollar in gold, and accrued interest.

From other sources which I considered perfectly reliable, I obtained corroborating information, all of which satisfied me that four thousand endorsed bonds, and two thousand direct bonds of the State were purchased by, and were on the 1st of January, 1871, the property of innocent and *bona fide* holders, who had never participated in any fraud upon the State or were cognizant of such. My predecessor had acknowledged, in his communication to the Senate, that he had endorsed four thousand bonds. Robert Soutter had sworn that he had sold that number. August Goettel had sworn that he bought the two thousand direct bonds. Robert Soutter and August Goettel being men of unimpeached veracity and high financial standing, and without interest in the matter, I awarded to their statements the highest credit. This testimony, confirmed in all its features by other facts, circumstances and information from financiers cognizant of the transactions, convinced me beyond a reasonable, or indeed any doubt at all, that it was my imperative duty, under the law controlling

me, to recognize the two thousand State, and four thousand endorsed bonds, and to provide for the interest accrued, and due thereon.

The law required me to investigate, and ascertain where said bonds were, and to pay the interest on all the bonds in the hands of innocent and *bona fide* purchasers. This I did, and no more. I pursued the strict letter and spirit of the law—a law clear, definite, and intelligible in its provisions.

The investigation disclosed the further astounding fact, that my predecessor in the Executive office had endorsed bonds of the Alabama and Chattanooga Railroad Company, to the amount, in value of five millions three hundred thousand dollars—or five hundred thousand dollars in excess of the amount on which the company could ever, by any reasonable construction of law, become entitled to endorsement. The Railroad being incomplete, and the history of the bonds numbered from 4,000 to 4,720 not being sufficiently satisfactory, I could not pay the interest due upon them. The bonds numbered from 4,720 to 5,300, were so clearly the offspring of fraud and villainy, their endorsement so utterly without the warrant of lawful authority, and being only hypothecated as far as I could ascertain, they were, therefore, in every aspect they might be considered, excluded from recognition by the Statute which prescribed my authority and confined the payment to interest on bonds in the hands of innocent and *bona fide* purchasers on the 1st day of January, 1871. I may here be permitted to add that in all this matter I had to pursue one of two courses—to refuse altogether to pay the interest due on any of the bonds, or to investigate and pay on those in the hands of innocent and *bona fide* bondholders. The law did not invest me with the power of repudiation, and I certainly had not the will nor the inclination to wantonly usurp it.

This default on the part of the Alabama & Chattanooga Railroad Company and the payment of the interest by the

State, invested the State with new rights, and imposed upon me corresponding duties and responsibility. By the statute above cited I was authorized to proceed "*under any of the statutes providing a summary remedy in such case, or according to any forms of law* deemed best and safest for the interest of the State to recover the amount so paid." By the statute of 1869-70 the right to seize the road and property of delinquent companies was given. The seizure of the road, if it had been practicable, would at that time have been signally unwise and profitless. My right, or at least my power to take possession, extended only to the limits of the State of Alabama. The portions of the road within the States of Mississippi, Georgia and Tennessee were beyond my official jurisdiction and control; a large portion of the road within the State of Alabama was unfinished. To have seized and held possession of a road thus incomplete and deprived of its termini and connections, would have been an exhibition of the grossest folly, as long as there remained the remotest hope of the company fulfilling its obligations, to complete the road, if not of its refunding the interest paid. Had such reasons not influenced me, there existed another and a stronger one to control—I may say compel—me to abstain from seizure at that juncture. By the statute loaning the *Two million bonds*, it was provided that before issuance and delivery thereof, the company should, among other things, execute and deliver to the State a bond of equal amount, with undoubted personal security, and conditioned to complete and equip the entire road, on or before the first day of June 1871. This bond had been executed, and was then in the treasury of the State, signed by D. N. Stanton, J. C. Stanton, Lewis Rice, A. C. Lippit and F. B. Loomis, as the personal security. A seizure before the first day of June, and the consequent prevention of the company's fulfilment of their contract, might have worked a release of the obligors, and I refrained from the risk. Had I destroyed the efficacy of the bond, my conduct would have

justly merited severe public reprehension. I may here very properly and pertinently remark that the Stantons, Rice, Lippit and Loomis constituted in fact the Alabama & Chattanooga Railroad Company, and were surely cognizant of this statutory barrier to my seizure of their road—confident I would not attempt to interrupt their possession, or secretly anxious that I should, and thereby relieve them from the terror of a two million bond. At all events, influenced alone by my convictions of duty and expediency, and totally ignorant of their villainous machinations—of their falsely and wickedly alleged expectations, on which their confederates and allies have dwelt with such wanton malice and pertinacity, I left the road in their possession, hoping that the Two Million bond would impel them to strain every nerve to finish it by the first day of June.

Upon petition filed by one of its creditors on the 31st of May, this railroad company was declared an involuntary bankrupt in the district court of the United States, sitting in Montgomery, and by an order of that Court the road and its property transferred to the possession and management of a special custodian. On the — day of June following, the circuit court of the United States reversed the decree of the district court and ordered the surrender of the road back to the company. In the bankrupt proceedings the State of Alabama was not a party, and therefore had no participation therein, except through her attorneys, to watch her rights and to be ready to intervene when their protection demanded it. During the pendency of the bankrupt suit I strenuously endeavored to induce the Alabama & Chattanooga Railroad Company to convey the road to the State, believing that by such a voluntary conveyance, prolonged and complicated litigation would be avoided, and the interest of the State and that of all other creditors better subserved. With a view to bring about more certainly and speedily a consummation so desirable, accompanied by the late General James H. Clanton as my

council and attorney, I visited New York, where the President and Directors of the company would be accessible. Having great reliance in the sagacity and earnestness of General Clanton I confided the accomplishment of our object almost entirely to him.

It is not necessary to occupy your attention with an extended narrative of our combined efforts, to obtain in this manner possession of the Road—suffice it to say, that if there was at any moment a probability of our success, that probability resting as it did on the terror inspired by the Bankrupt Court, vanished when the action of the circuit court of the United States was announced through the telegraph.

Soon after my return to the capitol, and at the *very earliest hour* that I believed myself justified by the law and the facts, I proceeded to seize the Road and its property. This course alone promised safety to the State, and the promptitude with which I embraced it, in my opinion defeated combinations, not only antagonistic to the interests of the State, but whose very formation aimed at their total sacrifice. I instructed my Private Secretary to repair to the road and take possession of it in the name of the State. This important mission I intrusted to Col. Gindrat, chiefly because he was a constitutional, recognized and already salaried officer of the Government. I deemed it of the greatest legal importance that the road should be strictly in possession of the State and the acts of the receiver or agent under my direct official control. To the decision, judgment and discretion, with which Col. Gindrat has so constantly and invariably discharged his onerous duties, may be attributed, in no small degree, the favorable results now so far achieved in the possession and operations of the Alabama & Chattanooga Railroad, throughout its entire length, from Meridian in the State of Mississippi to Chattanooga in the State of Tennessee.

The conflict has been long, and on the part of the adversary cunningly, and unscrupulously and desperately

waged; yet steadily and singly looking to one great paramount object—the maintenance of the interests and rights of the State of Alabama—my efforts have been rewarded with success, and my cherished hopes of ultimate and complete triumph confirmed.

The magnitude and complications of the questions involved, rendered it proper for me to seek counsel and guidance from lawyers, eminent for their experience and wisdom, and I did not hesitate to employ them. My official right, or rather power of seizure, terminated with the limits of the State. To gain possession of the portions of the road in Georgia, Tennessee and Mississippi, I caused suits to be instituted in their respective State courts, which gave speedy possession to Colonel Gindrat in Tennnessee and Mississippi; but the seizure by Governor Bullock, of Georgia, of the part within the confines of that State, prevented the opening of the entire line of road until Governor Conoley, taking a different and certainly a wiser and more courteous view of the matter, removed the obstacle.

GENERAL CLANTON.

From the very first instant of my struggle with the Alabama and Chattanooga Railroad to the sad and melancholy hour of his death, I was strengthened by the advice and determination of the noble and lamented Clanton. Faithful, zealous and unselfish in his devotion to Alabama, with an unwavering fortitude, he labored to promote her interests; and shrinking from no sacrifice, ever sought to vindicate her honor. It is a reflection of mingled sorrow and pleasure that my course received the co-operation and sanction of such a generous and earnest patriot. Remote from home when he perished, and in the service of the State, no admonition from me is necessary to prompt the General Assembly to render a just tribute to his memory, and an adequate recompense to his bereaved family.

EXPENSES INCURRED.

In all my transactions with this Railroad, in the payment of its interest, in gaining possession, and all subsequent operations, it has been my constant aim to incur no expense, not absolutely necessary; and in this regard the result has been singularly satisfactory.

The General Assembly, at its last session, was pleased to appropriate a contingent fund of ten thousand dollars. From that fund I have paid all amounts drawn from the State Treasury, on account of the Alabama and Chattanooga Railroad Company, including expenses in and about the payment of interest, all the expenditures of the Government for twelve months usually drawn from that fund, several hundred dollars for unpaid items in the year ending September, 1870; and transferred a balance of $1,422 16 to the contingent acccount of the current year. This is the very best that economy could do, and will not compare unfavorably with the history of contingent funds in former years.

It is to be remembered that all moneys paid or liabilities incurred by the State for the Alabama and Chattanooga Railroad, are claims on that company, and I have reason to hope that the Receiver will soon be enabled, out of the income of the road, to refund its indebtedness to the Contingent Fund, as well as to provide ample means to pay the fees of all attorneys employed. This I will urge. The payment of the interest due on the bonds was to redeem the pledged faith, and to maintain the credit of the State; the seizure and possession of the road to prevent as far as possible ultimate loss, to indemnify the past and secure the future, and to cease when that was achieved. It would be an erroneous policy, and dangerous alike to her financial, political and social morality, were the Government of Alabama to embark permanently in railroad operations.

The earliest possible adjustment therefore, of the Alabama and Chattanooga Railroad matters is exceedingly desirable.

Repayment of all interest and expenses paid by the State entitled the company to the right of repossession. This was not done and the Company has again been declared bankrupt. I do not apprehend any increased embarrassment from the bankruptcy of the company. The extensive jurisdiction of the bankrupt court may give to its proceedings in this behalf an efficiency and a value, scarcely to be hoped for in the Courts of four States. The State is of course no party to the bankrupt suit, yet the Hon. Richard Busteed, presiding judge of the District Court, recognizing judicially the vast interest of the States involved, by special order constituted Colonel Gindrat, the State Receiver, the custodian under the court. I have great confidence that the District Court will sustain the validity and priority of the State's lien on the road and property of the Alabama and Chattanooga Railroad Company, and will as expeditiously, as the rules of the Court and the Law permit, bring the matter to a final determination. The road and its property, real and personal, according to all estimates and information, are intrinsically of a value greater than the liabilities of the State, and whenever a clear and unencumbered title can be perfected more than one company of capacity and capital will be found ready to purchase it, and by the purchase relieve the State from liability.

To raise funds to pay the interest on the bonds of the Alabama and Chattanooga Railroad Company, I resorted to temporary loans, amounting in the aggregate, including principal and interest, to the sum of $545,000. For the payment of these loans, I executed my official obligations, and placed them in the hands of Duncan, Sherman & Co., the financial agents of the State, who received the proceeds thereof and paid the interest due in January and July upon the bonds, proven to have been in the hands of *bona fide* purchasers on the 1st day of January, 1871, and on none others; and Duncan, Sherman & Co. inform me by letter, that a balance remains of $22,452 37, against

coupons not presented. I recommend that the General Assembly make prompt provision for repayment of the sum borrowed by an act authorizing, in the alternative, an extension of the time, or raising by a new loan the amount necessary to meet it. The propriety of such an act is suggested by the existing condition of the Alabama and Chattanooga Railroad, and the hope that the income and proceeds of the property thereof may prove adequate to meet all the State's liabilities.

I herewith transmit communications from Colonel Gindrat and others of great interest and value in connection with the Alabama and Chattanooga Railroad.

RAILROADS ENTITLED TO ENDORSEMENT OF BONDS.

On the 1st day of November, 1871, the right of railroad companies to the State endorsement became, by operation of the law, limited to companies which had, from their resources, and prior to that date, built and equipped twenty miles of road. This confines future endorsement to the bonds of the following companies: South and North; Montgomery and Eufaula; Selma, M. and M.; Selma and Gulf; Savannah and Memphis; East Alabama and Cincinnati; Selma and New Orleans; Grand Trunk, and Vicksburg and Brunswick.

With the completion of these roads, nearly every section and every industrial interest will have reaped the benefits of the system, and the credit of the States strained to its capacity, and future endorsement should be special, not general in its character.

REPORTS OF AUDITOR AND TREASURER.

The accompanying annual reports of the Auditor and Treasurer, present to you in detail the working and condition of their respective departments.

The official statements of these officers are public documents, not only of great importance to the members of the

General Assembly, but also possessing deep interest to the whole tax-paying people of the State. It is therefore eminently proper that the facts they embody should be marshalled with accuracy, free from argumentative ambiguity, conveying information, as their purpose is, and not moulded and not arrayed to justify the theories of the officers from whom they emanate. The report of the Auditor is, as usual, lengthy and elaborate, but it is not characterized by the exacitude and clearness which his experience entitled me to expect. Absence of dates, obscure brevity, and plausible deductions so manifestly tend to mislead the Legislature, convey erroneous impressions to the public mind, and inflict injustice upon the history of the present administration, that I deem it my duty to prevent the wrong.

In his report for 1870, he estimated the aggregate receipts for 1871 at $1,230,000 00, the aggregate disbursements $1,193,155 33. The report now transmitted shows the actual receipts, including a balance, to have been $1,422,494 67, a sum exceeding the estimated disbursements by $229,359 24. This would have been a very gratifying result, if the estimate of disbursements had even approximated correctness. The Auditor now informs us that the disbursements, including his outstanding warrants on the treasury, are $1,640,116 99 instead of $1,193,135 30, being a difference of $446,981 69, between the estimated and actual disbursements. Notwithstanding this marvellous discrepancy the Auditor says "*that the estimates made by this office in last report were nearly correct, being only for money needed under the then existing laws governing disbursements from the State Treasury,*" and traces the deficit in the treasury to four several items, viz:

Protracted session of the Legislature	$50,442 31
Special appropriations	64,667 74
School appropriation under Revised Code	100,000 00
Premature payment to county Superintendents	117,500 00
Making a total of	$332,620 05

Which, were it correct, would still leave a balance of $114,361 65 of disbursements in excess of estimate unaccounted for. But why was the $100,000 00 claim under the Code not estimated, or why estimated to account for the discrepancy? Why was the item, $117,500 00, not estimated in the report of 1870? Was it not a liability of the State Treasury? The Superintendent of Public Instruction, in his report to me, and now transmitted to the two Houses, in alluding to the Auditor's use of these two items, is conclusive in his reply. Among other arguments the Superintendent says: "The Auditor should have known that the sum of $100,000 00 under section 957 Revised Code, would be needed. He had before him the amount of School Fund accruing from all other sources, and he had also before him the number of children of school age, the enumeration for 1870, which, under the law, continued in force for two years, having been reported to him by my predecessor. By placing the total enumeration side by side with the certain school fund, he would have seen at a glance that the $100,000 00 became appropriated by law and must be met during the year. The school fund for 1869 was larger than that of 1870, and the enumeration of children was the same, yet the $100,000 00 was needed and drawn in 1869. This fact should have satisfied him that the contingency, which appropriated that sum, was already in existence. Since the creation of the school system in 1855, there has been no year in which such a state of facts has arisen as to relieve the Treasury of liability for that appropriation. It is only necessary to say in answer to the $117,500 00 item that the Superintendent of Public Instruction has no power to *direct* the Auditor to issue a warrant or to refrain from doing so. The Auditor looks for his directions, instructions, &c., to the law and not to the Superintendent. Nor is it true that any such item as that of of $117,500 00 was brought forward by the new law from the months of October and November into the fiscal year ending September 30, 1870–71.

Under either the new or old law the whole of the school fund would in all probability have been called for by the first day of July. The Auditor has no right to expect that a portion of the warrants upon the school fund for 1871 would not be called for until after the fiscal year had closed. A moment's reflection would have convinced him that the public school teachers who had in the first part of the year taught three months (the longest time usually justified by the amount due their townships) could not be expected to wait for their money until after the close of the fiscal year."

The Superintendent further says: "Unfortunately, however, the Auditor in his last annual report, placed his estimate (see page 20 of that report) of educational expenses for the year as follows:

Interest on educational and trust funds	$223,000 00
One fifth of aggregate revenue received during the fiscal annual year 1870	$250,289 33
Total estimate, including $24,000 due the State University	$473,289 33
Deducting the University interest from this sum, his estimate for the public schools was	$449,289 33
The correct estimate should have been	$727,200 93
Leaving a deficiency in estimate	$277,911 60

Being an error to that extent in the Auditor's estimate of the school fund alone. The actual necessary total disbursements were greater than the amount estimated by $446,981 69, yet according to the Auditor, "The Executive and the Legisiature were *fully advised* of the needed disbursements provided the laws relating to disbursements from the treasury had remained the same as in former years." This is a very grave and erroneous conclusion of the Auditor. How could the Executive and Legislature have been fully advised, when his reports, the constituted source of their information, exhibits a discrepancy between the actual and estimated disbursements of

$846,981 69? Nor does the qualification, "provided *the laws relating to disbursements from the treasury remained the same as in former years*," modify or reduce the gravity of his error. The laws regulating or relating to disbursements from the treasury, if changed at all, were not materially changed since he made his estimate. Calling attention to the Public Debt, the Auditor uses these words: "Attention is called to the tabular statement of the Public Debt, embracing all the direct liabilities of the State, amounting to $8,761,917 37. This is an increase of $283,906 62 over statement one year ago." This statement is reprehensibly faulty.

The Public Debt is not $8,761,917 37; it is only $5,442,300 according to his own tabular statement. The University and other funds, what is known as the Patton certificates, and accounts unsettled or Auditor's warrants unpaid, which he uses to make up the other $3,319,617 00 do not constitute, in any accepted signification of the term, Public Debt, and their inclusion as such, unwarranted and unexplained, greatly tends to damage the value of the State securities. This error on the part of the Auditor was adverted to by my predecessor in his annual message to the General Assembly on the 15th day of November, 1869, in the following comprehensive paragraphs:

"The Auditor is a faithful and efficient officer; but I am constrained to express my dissent from the views embodied in his report in regard to the school fund. He says, in effect, that the fund has been lost or misapplied by the State. It is perfectly clear to my mind that his reasoning and conclusion are based upon a misapprehension of the laws of Congress under which the fund was created, and the Constitution and laws of the State under which it is controlled.

By the act of Congress, approved March 2, 1827, the Legislature of Alabama was clothed with authority to sell and convey in fee simple, the lands, or any portion thereof, which have been appropriated to the State for school pur-

poses; and to invest the money arising from the sales in some productive fund, the proceeds of which shall be forever applied, under the direction of the Legislature, to the support of common schools. Under the language of this constitutional statute, full discretion is given the legislature to determine the manner in which the investment is to be made. The Legislature, for all the purposes of this act, is not the State; but as trustee it invested the fund in the State's credit. In pursuance of a law passed for the purpose, the State took the money arising from sales of donated lands under express statutory obligations to pay interest upon it. This was done years ago; and the State has scrupulously complied with its engagement by promptly paying the required interest; while the trustees (the Legislature,) made effective provision for the application of the interest to the support of common schools in the appropriate townships. In all this there is no misapplication or destruction of the fund.

It is true, the Legislature might have invested the fund in bank stocks or other securities. But it exercised its discretion otherwise, though in a way that accomplished all the purposes contemplated by Congress.

The Auditor further speaks of this school fund as a part of the State's indebtedness. On this point also, there is manifestly a misapprehension. It is expressly provided by the law of Congress that the fund proper is never to be paid to the beneficiary, or used in any way or for any purpose except to produce an income. All the legislation of our State has been in strict accordance with this provision. But this is not all. A similar requirement is embodied in our State Constitution. Section 10, article 11, of that instrument, says that the fund in question "shall be and remain a perpetual fund," "the interest and income of which" shall be "inviolably appropriated to educational purposes." Inasmuch, therefore, as both the law of Congress and the State Constitution prohibit the payment of the fund itself, or any part thereof, it

cannot, in any legal sense, be considered a debt. Further than this, that part of the Constitution above cited, which provides that the fund "shall be *and remain*" perpetual, not only sanctions what has already been done with it, but seems to require that it be permanently kept in its present condition."

Misapprehension on this subject is the natural result, overlooking the following undeniable positions: "1st. Congress made the Legislature, not the State, the trustee; 2nd. The trustee is required to invest the fund so as to produce an income, and is specifically prohibited from paying over the fund to the benficiary; 3d. The trustee, (the Legislature,) is clothed by the act of Congress, with a large discretion as to the mode in which the fund is to be invested; 4th. An obligation by a State statute is as effectual as by a State bond."

Yet the Auditor persists in the error, and adds that it is "an increase of $283,906 62 over the statement rendered one year ago" without explanation. No bonds have been issued and no Public Debt incurred by or during the present administration. Whence arises this increase of the public debt? The Auditor leaves the explanation to the figures of his tabular statement, where it is discovered that the eight per cent. bonds, payable in New York in 1886 and 1888 amounted to about sixty thousand dollars ($60,000) more than the Auditor stated them to be in his report of last year. This sum, added to $217,622 32 of Auditor's warrants of past fiscal year unpaid, and six thousand dollars borrowed under former administration, make up, it is supposed, this increase of the Public Debt. With this elucidation of the Auditor's increase of the Public Debt, I invite your attention to the following paragraph, found in the Auditor's report, (on page 21 thereof): "I regret to call your attention again to the fact that the proceeds of sale of the bonds of the State of Alabama, made long since as per official information on file in this office, have not been certified as required by law." The amount stated last

year as not having been placed into the Treasury was $112,400 00, to which, if we add those sold during the fiscal year just closed, $59,500 00, we have a total amount of State bonds sold and not certified into the Treasury, of $171,900 00. This office is unofficially informed that much of this amount has been already expended by the financial agents, in payment of liabilities incurred during the fiscal year."

Justice to Lehman, Durr & Co., financial agents, who have at all times exhibited a willingness and ability to promote the fiscal interests of the State, requires a more explicit statement of the transactions here alluded to. The bonds in question were placed in their hands for sale, and sold, and the proceeds, one hundred and two thousand seven hundred and forty-one dollars and sixty-six cents ($102,741 66,) of bonds of $112,400 00 par value applied by them to the payment of interest, etc., long prior to the commencement of the present administration, while proceeds, $51,994 74 of bonds of $59,500 00 par value have by them been applied to the payment of interest due on the 1st November last. Thus it appears that no part of the proceeds of the $171,900 00 bonds was applied to the "payment of liabilities of the State incurred during the fiscal year," all of which is more fully set forth in the accounts rendered to the Government by Lehman, Durr & Co., and herewith transmitted to the General Assembly.

Under the head of the three per cent. fund the Auditor refers to a warrant for $40,000, drawn in favor of the Selma and Gulf Railroad Company, issued "by direction of the Governor" "since his last report," *as an unexpected draft upon the Treasury, and its payment refused until compelled by a writ of mandamus from the Supreme Court.*

In all this the Auditor is correct. During the administration of my predecessor, such a warrant was issued, but believing that no existing law justified it, I instructed the Treasurer not to pay it and he did not, until compelled by mandamus in June last.

The Auditor advises numerous changes in existing laws, and presents elaborate views on the question of taxation and the policy which should regulate it—all of which are worthy your earnest consideration.

The Report of the Treasurer commends itself to a careful consideration. The receipts during the last fiscal year have been greater in amount than in any former year—the period of war and proceeds of loans excluded; yet their aggregate amount, as has been shewn in adverting to the Auditor's Report, has not been equal to the demands upon it, while a large balance of outstanding warrants, chiefly due the public schools, remains unpaid. This result has occurred notwithstanding a very large diminution in the ordinary current expenses of the Government.

TAXATION.

The rate of taxation was reduced at the last session of the Legislature from seventy-five to fifty cents on the hundred dollars *ad valorem* of property. I still believe that the present rate will be sufficient, provided the school fund is wisely limited to its legitimate sources—special appropriations prudently made, and the levy and collection of taxes faithfully managed.

It will be better and more agreeable to a people not yet entirely restored to prosperity, to empower the Executive Department to negotiate a temporary loan to meet any deficit which may occur than to increase the burden of taxation for the ensuing year.

REPORT OF SUPERINTENDENT OF PUBLIC INSTRUCTION.

To the report of the Superintendent of Public Instruction, herewith submitted, I solicit your most deliberate attention. Since its first establishment at the session of the General Assembly 1853-4 to the present time, our Public School system has been an absorbing subject of discussion and legislation; yet, to-day, it is far from being

acceptable or satisfactory to the people. As now organized, its usefulness is certainly not proportionate to the cost of its maintenance and administration. Many of its chief defects are inherent and constitutional and cannot be reached by present legislation. Much, however, may be done to rescue it from the popular odium into which it had fallen and from which the present energetic, accomplished and devoted Superintendent of Public Instruction has struggled, though partly in vain, to relieve it.

The people submit without a murmur to taxation, when it is reasonable, equitable and commensurate with the good it contemplates and effects—taxation without corresponding benefits is never long endured.

According to the Superintendent's Report, the school fund for the year 1871 was $581,389 29, which, added to $145,811 64, makes a total amount of $727,290 93, to be paid out of the revenue collected in the fiscal year of 1871, of which $211,217 79 remains unpaid and chargeable upon the revenue of 1871–2, thus increasing the aggregate charge of school fund upon the revenue of the current fiscal year of $940,934 32. An enormous sum for a system, far from being strong in the affections of the people—a sum only thirty thousand dollars less than the fiscal income of the State from all sources!

The education of the masses is a proper and legitimate object of the Government's fostering care, and should be cherished with a liberal devotion; but it is not to be forgotten that the Treasury at last determines the State's capacity to do so. The expenses of our public school system are greater than the revenue can meet, and it therefore behooves the General Assembly to consider and provide the remedy. The Constitution designates the sources from which the school fund should be derived, but does not of course prohibit the Legislature from increasing the fund so derived, by other appropriations—hence the department of Public Instruction claimed that, by the readoption of the Revised Code, it became entitled to the

$100,000 appropriated therein to support the old system of education, and it was allowed and continues to be drawn from the Treasury. The Constitution provides that one-fifth of the general revenue shall be set apart for school purposes, but by *construction* $100,000 is added to that generous amount. The re-adoption of the Code never contemplated such a result, and your consideration to it is invited.

The one-fifth of the general revenue, appropriated by the Constitution is ascertained by the Auditor from the receipts of the preceding year. Is this proper? Should it not be one-fifth of the estimated receipts of the current year? According to the criterion adopted, if the revenue for any one year amounted to four millions of dollars, and that of the year following to eight hundred thousand dollars, the amount the school fund would be entitled to, according to present interpretation and practice, would absorb the entire revenue.

The Superintendent recommends the settlement of all school liabilities by the sale of bonds. This suggestion, as well as the repeal of that section of Revised Code under which the $100,000 is claimed as part of the school fund, a change in the mode of ascertaining one-fifth of the general revenue and the propriety of confining all expenditures, needed in the management of the system, to the educational fund itself, are confided to the wisdom and action of the General Assembly.

The restoration of the State University to the influence and usefulness it once possessed, as a Seminary of learning, should be an object of interest and pride, alike to the Government and citizens of Alabama.

Its recent organization under favorable auspices, its large, able and energetic faculty of professors, with its very liberal endowments, will surely secure to it a patronage which will render it self-sustaining in the future.

On application to the proper department of the Federal Government, I obtained Alabama's quota of land scrip, donated by Congress to the several States, for the purpose

of establishing agricultural colleges, said quota representing 240,000 acres of land. Pursuant to authority granted by the board of commissioners, authorized by act of last session of the Legislature to obtain and dispose of said scrip, I sold it for 90 cents per acre, the largest price obtained by any of the States. The Auditor informs me that upwards of $50,000 has already been received, and I have no doubt the entire sum will be punctually paid. The location and establishment of the agricultural college is a subject for your consideration.

REPORT OF COMMISSIONERS TO EXAMINE STATE OFFICES.

The ability and faithfulness which have distinguished the Auditor, Treasurer and Superintendent of Public Instruction in the discharge of their official duties, will more fully appear from the accompanying report of the commissioners appointed by me to examine their respective offices. This report exhibits much discernment, scrutiny and labor on the part of the Commissioners and will be found to possess more than usual interest and information.

It appears from this report that there is a conflict of opinion between a majority of the Commissioners and the Auditor, as to the application of certain statutory fees collected by him. It is the province and duty of the Legislature to settle this variance by a declaratory law.

STATE PENITENTIARY.

There has been no material change in the condition, operation and management of the Penitentiary since your Committee of last session visited and inspected it.

The contract of lease, under which the lessees are authorized to employ the convicts on works outside of the penitentiary expires on the 5th day of June, 1872. It therefore devolves upon the present General Assembly to provide for the disposition of the convicts from and after such expiration.

Humanity combined with economy, should characterize

your legislation on this subject. The advanced sentiments of the age, the chastening influences of Christian charity, point to the prevention of crime rather than the fruition of revenge by the punishment of the criminal. A return to the old system of working the convicts within the walls of the penitentiary will demand a large expenditure of money to repair and enlarge the buildings, as well as to supply the necessary machinery and mechanical tools, which the treasury is not at present in a condition to furnish. I therefore recommend that authority be by law given to the Executive to enter into a contract of lease similar to that now existing, but for a shorter period and providing more stringent stipulations as to the treatment and safe keeping of the convicts. The Inspectors have forwarded brief quarterly reports to this office, which, with a list of pardons and reasons for granting them, I now transmit to you.

INSANE HOSPITAL, &C.

No annual reports from the Insane Hospital, Institution for Deaf and Dumb, or Freedmen's Hospital, have been received at this department. When they arrive I will submit them to the General Assembly.

By reference to the Auditor's Report it appears that warrants, amounting to $79,071.73, have been drawn upon the treasury, under existing laws, in behalf of the Insane Asylum. This is a very large amount, and I hope the Report of the Superintendent will justify its expenditure and receive the approval of the General Assembly.

ARMS, &C.

Having received a communication from the War Department at Washington informing me that the State of Alabama was entitled to a large quantity of arms, &c., under the Act of Congress of April 22d, 1868, and which on application would be delivered to any agent I might

appoint to select and receive them, General William H. Allen, my Adjutant General, was instructed to proceed to Washington for that purpose. He found no difficulty in the accomplishment of his mission, and his report herewith transmitted, contains views and suggestions, as to the military organization of the State, well worthy of your consideration.

In concluding this communication, permit me to express my earnest hope that a benignant Providence will preside over your deliberations and render them conducive to the welfare and prosperity of the State.

ROBERT B. LINDSAY.